

Notice of Allowability

Application No.

10/517,723

Examiner

Ernst V. Arnold

Applicant(s)

NEU ET AL.

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1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/29/06.
2. ☒ The allowed claim(s) is/are 6, 7, 2, 3, 4, 10, and 12 [renumbered as 1-7].
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other

[Signature]
EXAMINER
GROUP 63

EXAMINER'S AMENDMENT

An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on 11/29/06, Harold Pezzner requested an extension of time for 2 MONTH(S) and authorized the Director to charge Deposit Account No. 03-2775 the required fee of \$450.00 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The after-final amendment filed on 9/22/06 has been entered.

The application has been amended as follows:

Claim 4 (currently amended) The method as claimed in claim 6, characterized in that xenon and the medicament comprising a pharmacologically effective concentration of NO gas, NO-containing gas or gas mixture are administered simultaneously, separately or sequentially.

Claim 5 (cancelled)

Claim 6 (currently amended) In a method of treating a patient by administering a medicament to the patient wherein the medicament is inhaled by the patient during the

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treatment, the improvement being in that the medicament is a xenon preparation which is provided in a form of a combination medicament comprising a pharmacologically effective concentration of xenon selected from the group consisting of gaseous xenon and a xenon containing gas mixture, and a medicament that comprises a pharmacologically effective concentration of NO gas, NO-containing gas or gas mixture, administering the xenon to a patient in a subanesthetic amount wherein the gaseous xenon or the xenon containing gas mixture administered to the patient contains no more than 70% by volume of xenon and when the gaseous xenon or xenon containing gas mixture is metered into the patient's respiratory gas so that the combined gas supplied to the patient contains from 5 to 70% by volume xenon, administering the medicament that comprises an NO gas by inhalation and the combination medicament is administered to a patient for a treatment selected from the group consisting of (a) treatment of impairments of blood flow in the brain, (b) treatment of impairment of cerebral perfusion, (c) cerebral protection, (d) treatment of stroke, (e) improving the oxygen supply in the brain, (f) treatment of post-ischemia syndrome, (g) promoting blood flow in the brain, and (h) cerebral vasodilation, and selecting a patient in need of one of said treatment (a) to (h).

Claim 7 (currently amended) The method as claimed in claim 6, wherein the preparation is administered to a patient for a treatment selected from the group consisting of cerebral protection and cerebral vasodilation.

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Claim 12 (currently amended) The method as claimed in claim 6, wherein the preparation consists of a combination medicament containing gas mixture of xenon and NO gas.

The following is an examiner's statement of reasons for allowance: The closest prior art does not disclose or suggest, alone or in combination the instantly claimed method of treating a patient via inhalation with a subanesthetic amount of xenon in combination with nitric oxide. The art teaches that inhaled nitric oxide induces cerebrovascular effects and influences cerebral blood flow (Kuebler et al. Neuroscience Letters 2003, 348, 85-88 and Vavilala et al. Anesth Analg 2001, 93, 351-3). However, the art does not teach or even suggest treatment of patients with inhaled nitric oxide in combination with a subanesthetic amount of xenon.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

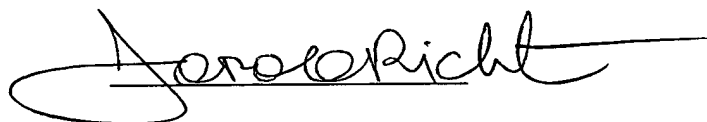
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (6:15 am-3:45 pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ernst Arnold
Patent Examiner
Technology Center 1600
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A handwritten signature in black ink, appearing to read 'Johann Richter', with a large, stylized loop at the beginning and a horizontal line extending to the right.

Johann Richter, Ph.D. Esq.
Supervisory Patent Examiner
Technology Center 1600